opposite view has prevailed, either upon the ground that the rule as to notice is the same in suits for divorce as in ordinary suits *in personam*, or upon the ground that, in the absence of actual notice or appearance, the decree, while it may release the libelant, cannot release the libelee from the bond of matrimony," citing *People* v. *Baker*, 76 N. Y., 78 (1879), and other cases. In the first part of the opinion, the Court, citing *Pennoyer* v. *Neff*, 95 U. S., 714 (1877), effectively disposes of the first contention, saying "The rule as to notice necessary to give full effect to a decree of divorce is different from that which is required in suits *in personam*"; while in another portion, the second contention is thus dismissed: "The marriage tie, when thus (lawfully) severed as to one party, ceases to bind either. A husband without a wife or a wife without a husband is unknown to the law."

PASSENGER ELEVATORS—RES IPSA LOQUITUR.—The recent decision of the Court of Appeals in the case of *Griffen* v. *Manice*, 59 N. E., 925 (1901), New York Law Journal, March 22, 1901, raises the question of the application of the principle *res ipsa loquitur*, and of the liability of an operator of a passenger elevator. The facts were briefly these: The elevator in which the plaintiff's intestate was riding fell suddenly to the bottom of the shaft; a moment later the counter balance weights fell through the top of the elevator and instantly killed him. The Appellate Division sustained the ruling of the trial Court—that the jury might infer negligence from the accident, and that as to the appliances by which the elevator was controlled, the defendant's duty was similar to that of a common carrier. The Court of Appeals affirmed the first proposition, but held that the defendant was bound only to use a degree of care commensurate with the dangerous character of the service.

In applying the principle *res ipsa loquitur* the Court repudiates a suggestion formerly made in this State and to some extent acted upon, that it should be confined to those cases in which the relation of passenger and common carrier exists, or in which there has been an interference with the safety of a public highway. *Cosulich* v. *Standard Oil Co.*, 122 N. Y., 118 (1890). Undoubtedly the principle is most frequently applied to cases of railway accidents, for if it appears that the accident resulted from a defect in the vehicle or road-bed, it may be reasonably presumed that the carrier was at fault, since it is hardly conceivable that a defect can exist which extreme care aided by science and skill is incapable of detecting. *Curtis* v. *R'y Co.*, 18 N. Y., 534 (1859); *Seybolt* v. *R'y Co.*, 95 N. Y., 562 (1884). And it has been established by precedent that the falling of objects into a highway from a building, if unexplained, is *prima facie* evidence of negligence. *Byrne* v. *Boadle*, 2 H. & C., 722 (1863); *Mullen* v. *St. John*, 57 N. Y., 567 (1874). But there is no reason for limiting the principle to these cases. For it is primarily the nature of the accident which gives rise to the presumption, and the relation of the parties, or the particular place where

the casualty occurs so far from being an essential element, is important only, on the one hand in that it makes out a clearer case; on the other, in that the inference has been allowed in similar cases. In short, whether or not the principle is applicable is a question of fact for the court sitting as a jury to decide upon. Therefore, no hard and fast test can be laid down. It may be said, however, that if the evidence in a given case goes to show that in the nature of things the accident would not have occurred if the defendant had exercised proper care, the court, as in the principal case, is justified in permitting the jury to infer negligence from the fact of the accident viewed in the light of the surrounding circumstance. *Scott* v. *London Dock Co.*, 3 H. & C., 596 (1865). But if the evidence is conflicting and is as consistent with the hypothesis of due care as with that of negligence, the Court should not allow the inference to be drawn. *Millie* v. *Manhattan R'y Co.*, 5 Misc., 301 (N. Y., 1893).

Upon the question of liability the conclusion reached by the Appellate Division seems to be more expedient and to conform better with the present needs of society. For although an elevator operator is not technically a common carrier, yet the considerations of public policy which require extraordinary diligence of the latter, would seem to require a similar degree of diligence of the former. In each case the passenger's safety depends wholly upon the operator's vigilance; in each case the probability of a serious accident, unless extraordinary vigilance is exercised, is imminent. The objection that an elevator operator receives no compensation for the carriage is met by the fact that he receives adequate compensation, indirectly at least, from the rent paid by the tenants. In several jurisdictions the question has been decided in favor of the view here contended for. *Oberfelder* v. *Doran*, 41 N. W., 1094 (Neb., 1889); *Goodsell* v. *Taylor*, 42 N. W., 873 (Minn., 1889); *Treadwell* v. *Whittier*, 22 Pac., 266 (Cal., 1889); *Marker* v. *Mitchell*, 54 Fed. Rep., 637 (1893); *Kentucky Hotel Co.* v. *Camp*, 30 S. W., 1010 (Ky., 1895); *Southern B. & L. Association* v. *Lawson*, 97 Tenn., 367 (1896); *Ripland* v. *Hirchler*, 7 Pa. Super. Ct., 384 (1898). The recent case of *Springer* v. *Ford*, 59 N. E., 953 (Ill., 1901), extends the liability to the operator of a freight elevator.

BANKRUPTCY—EXEMPTIONS.—The Bankruptcy Act of 1898 does not disturb the law of the State as to a debtor's exemptions. Section 6. *In re Ogilvie*, 5 Am. B. R., 374 (South. Dist. Ga., 1901. The trustee, in succeeding to the bankrupt's property, does not take title to specific exempted property. Section 70*a*. *In re Hester*, 6437 Federal Cases (Dist. Ct. N. C., 1871), 46 N. Y., 36; *Schlitz* v. *Schatz*, 12,459 Federal Cases (Dist. Ct. Misc., 1870). But as to those articles from which a debtor is entitled to select exemptions, the trustee takes title subject to defeasance by the bankrupt's selection. Consequently the administration of exempt property does not fall within the jurisdiction of the bankruptcy court. *Woodruff* v. *Cheeves*, 5 Am. B. R., 296 (C. C. A. Ga., 1901); *In re Hatch*, 4